

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF SACRAMENTO AND THE NATOMAS EDUCATION  
FOUNDATION REGARDING A \$500,000 DEVELOPMENT AND  
CONSTRUCTION GRANT**

This memorandum of understanding ("MOU") is entered into as of \_\_\_\_\_, 2006, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("City"), and the **NATOMAS EDUCATION FOUNDATION** a non-profit corporation, ("Foundation"). The City and the Foundation shall be referred to herein collectively as the "Parties" and individually as "Party."

**RECITALS**

This MOU is entered into by and between the Parties in consideration of the following:

On May 23, 2006, the Sacramento City Council authorized the 2006 Community Reinvestment Capital Improvement Program ("CRCIP"). The CRCIP provides for issuance of Capital Improvement Revenue Bonds ("Bonds") for the funding of various CRCIP community projects, including the construction of the Natomas Community Performing and Fine Arts Center ("Project").

The Project will be an innovative performing arts complex located on the Natomas Charter School campus. The 10,000 square foot Project includes a 364 seat theatre, a large foyer that will serve as an art gallery, two standard rooms for instructional purposes, a dance studio, an art walk and an art plaza.

In order to ensure fiscal responsibility and accountability in the management of the CRCIP and the Project, the City Council has adopted six policy directives regarding the use of Bond proceeds. These directives state:

1. Preliminary Work: Projects that have not begun preliminary work which may include acquisition, community outreach, environmental, design, etc. within twelve (12) months of July 1, 2006, will be reassessed for continued funding or substitution of other projects.
2. External Funding Sources: City bond funds will not be advanced until such time that fifty percent (50%) of the needed external funding is achieved.
3. Grant Funds: Agreements or MOUs with grantee organizations should be put in place to ensure project objectives will be met before funding is awarded.

4. General Fund Loans: Loan or Development Agreements with grantee organizations must be put in place prior to award of funding.
5. Contingency: Contingency is earmarked for Tier 1 construction projects and should not be reprogrammed to Tier II or other projects until assurance can be made that all Tier I projects have sufficient funding to be completed; and the contingency can be reduced at the time of bond sale of an amount not less than twelve percent (12%) of the Tier I projects that have a contingency, if such reduction is necessary to maintain project funds for all Tier I projects originally approved by City Council. City Council must approve all use of contingency.
6. Bond Proceeds Management: The City Treasurer's Office will report back to City Council semi-annually on the availability and programming of investment earnings and the status of projects as they relate to compliance with tax-exempt regulations and Policy Directives, and City Council authorize the use of investment earnings from the 2006 CIRB (excluding the SHRA component) unspent lease revenue bond funds to restore all Tier I projects should interest rates increase prior to the bond issue and a reduction in contingency funds previously described not be sufficient to offset the loss of project funds due to potential interest rate increases.

The Parties enter into this MOU for the purpose of completing the Project in accordance with the directives, objectives and goals of the City as stated herein. Accordingly, and in consideration of the mutual covenants and promises contained herein,

**THE PARTIES AGREE AS FOLLOWS:**

1. **Project.** The Foundation, under agreement with the Natomas Unified School District, will complete the Project by December 31, 2007. The Project is currently under construction, and near completion, on the campus of the Natomas Charter School located at 4600 Blackrock Drive, Sacramento, California.
2. **Project Budget.** The cost of the Project is estimated at \$7.3 million. The Foundation has secured \$6.8 million from the following sources: \$4.1 million from the Natomas Unified School District which is a combination of Measure A funds, Certificates of Participation, and future General Obligation Bonds; \$2.2 million from a state grant, and \$500,000 from the City's CRCIP. The Foundation has commitments for the remaining \$500,000, and has collected all but \$200,000 of this money.

3. **Public Use of Facility.** The Natomas Community Performing and Fine Arts Center shall be available for community and public use in accordance with the Natomas Unified School District's and the Natomas Charter School's facilities use policies.
4. **City Funding.** The City agrees to provide up to \$500,000 to the Foundation for the cost to construct the Project, or "Project Costs". City Bond funds will not be disbursed to the Foundation until fifty percent (50%) of the external funding is received.
  - A. **Project Costs.** Project Costs shall mean and include costs related to all contracts for the construction of the Project, and costs associated with all other contracts for professional and other services necessary, in the City's judgment, to implement and complete construction, together with all planning and design costs. Project Costs also shall include, but not be limited to, the engineering estimates and the Project elements included therein, construction inspection fees, and whichever of the following costs or fees, if any, may be applicable: environmental documentation (whether prepared by outside consultants or City staff), City project administration, plan check and inspection fees.
5. **Project Completion.** The Project shall be completed by December 31, 2007.
6. **Foundation Reporting Requirements.** The Foundation shall submit the following reports to the City's Project Manager in both written and electronic forms:
  - A. Project budget prior to funding of the Project by the City.
  - B. Project income and expense statements in conformance with generally accepted accounting principles by the 15<sup>th</sup> of each month for the preceding month.
  - C. Project status reports semiannually on first day of January and July until the Project is complete.
  - D. Final Project status report, including photographs of completed Project and proof of payments, to be submitted within thirty (30) days of Project completion.
7. **Maintenance and Inspection of Records.** Bond funds shall be used for the Project only and for which there shall be a separate accounting by the Foundation. During performance of this MOU, and for a period of three (3) years after completing the Project, the Foundation shall maintain all accounting and financial records related to the Project and this MOU and

shall keep and make such records available for inspection and audit by representatives of the City upon reasonable written notice.

**8. Licenses, Permits, Etc.** The Foundation represents and warrants that all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for to perform the terms of this MOU are in place now and will be at all times during the term of the MOU.

**9. Indemnity and Hold Harmless.**

A. Indemnity: The Foundation shall indemnify and save harmless, City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to the extent such Liabilities are caused by or arise from any negligent act or omission, recklessness or willful misconduct of the Foundation, its contractors, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this MOU, whether or not (i) such Liabilities also are caused in part by the passive negligence of the City, its officers or employees, (ii) the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the Foundation, its contractors, subcontractors or agents, and their respective officers and employees, or (iii) such Liabilities are litigated, settled or reduced to judgment.

B. Obligation to Defend: The Foundation shall, upon City's request, defend at the Foundation's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities caused by or arising from any negligent act or omission, recklessness or willful misconduct of the Foundation, its contractors, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this MOU, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section, the existence or acceptance by City of any of the insurance policies or coverages described in this MOU shall not affect or limit any of

City's rights under this Section, nor shall the limits of such insurance limit the liability of the Foundation hereunder. The provisions of this Section shall survive any expiration or termination of this MOU.

10. **Insurance.** During the entire term of this MOU, the Foundation shall maintain the insurance coverage described in this Section.

The Foundation, at its sole cost and expense and for the full term of this MOU, shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any activities under this MOU.

It is understood and agreed by the Foundation that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Foundation in connection with this MOU.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance, providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Foundation.

No automobile liability insurance shall be required if the Foundation completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this MOU."      (the Foundation initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance, with limits of not less than one million dollars (\$1,000,000). The Worker's

Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the City by selecting the option below:

Che Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the Foundation.

No Workers' Compensation insurance shall be required if the Foundation completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." Che (the Foundation initials)

- (4) Professional Liability Insurance, providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the City by selecting the option below:

Che Professional liability insurance is required and must be continued for at least 1 year(s) following the performance of the terms of this MOU.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of the Foundation, products and completed operations of the Foundation, and premises owned, leased or used by the Foundation. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the City by selecting the option below:

Che Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, the Foundation's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of the Foundation's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- (3) Coverage shall state that the Foundation's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section must be declared to and approved by the City Risk Management Division in writing prior to execution of this MOU.

E. Verification of Coverage

- (1) The Foundation shall furnish City with certificates and required endorsements evidencing the insurance required.

The certificates and endorsements shall be forwarded to the Project Manager. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (2) The City may withdraw its offer of contract or cancel this MOU if the certificates of insurance and endorsements required have not been provided prior to execution of this MOU. The City may withhold payments to the Foundation and/or cancel the MOU if the insurance is canceled or the Foundation otherwise ceases to be insured as required herein.

F. Consultants and Contractors

The Foundation shall require and verify that all consultants, sub-consultants, contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

11. **Regulations and Ordinances.** The Foundation shall, at all times, comply with and abide by all pertinent or applicable regulations and ordinances of the City of Sacramento and County of Sacramento and the laws of the State of California and the United States insofar as the same or any of them are applicable and shall obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein.
12. **Equal Employment Opportunity.** During the performance of this MOU, the Foundation, for itself, its assignees and successors in interest, agrees as follows:
  - A. Compliance With Regulations: The Foundation shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
  - B. Nondiscrimination: The Foundation, with regard to the Project, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of consultants, contractors and subcontractors, including procurement of materials and leases of equipment. The Foundation shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
  - C. Solicitations for Contractors or Subcontractors, Including

Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the Foundation for work to be performed under any contract or subcontract, including all procurement of materials or equipment, each potential contractor or subcontractor or supplier shall be notified by the Foundation of the Foundation's obligation under this MOU and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

- D. Information and Reports: The Foundation shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Foundation is in the exclusive possession of another who fails or refuses to furnish this information, the Foundation shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by the Foundation with the nondiscrimination provisions of this MOU, the City shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of Bond funds to the Foundation until the Foundation complies; and
  - (2) Cancellation, termination, or suspension of the MOU, in whole or in part.
- F. Incorporation of Provisions: The Foundation shall include the provisions of subsections A through E, above, in every contract and subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. The Foundation shall take such action with respect to any contract or subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Foundation becomes involved in, or is threatened with, litigation with a contractor, subcontractor or supplier as a result of such direction, the Foundation may request City to enter such litigation to protect the interests of City.

**13. Waiver.** Neither City approval of the Project, nor grant of Bond funds for

the Project, nor any acceptance by the City of the performance of the Foundation, its contractors, subcontractors or agents, and their respective officers and employees under this MOU, nor any waiver by City of any default, breach or condition precedent, shall be construed as a waiver of any provision of this MOU, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

14. **Severability.** If any portion of this MOU or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this MOU shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Assignment Prohibited.** The Foundation shall not assign any right or obligation pursuant to this MOU without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.
16. **No Agency.** Neither Party, nor any of its agents, contractors or employees are or shall be considered to be the agents of any other Party in connection with the performance of any of act under this MOU.
17. **No Partnership Relationship.** It is understood and agreed that the Foundation is an independent organization and that no relationship of employer-employee, partnership or joint venture exists between the Parties hereto for any purpose whatsoever. Except as expressly provided in this MOU, the Foundation and the Foundation's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor to bind City to any obligations whatsoever. City shall not control the activities of the Foundation, and City and City's personnel shall have no authority, express or implied, to act on behalf of the Foundation in any capacity whatsoever as an agent, nor to bind the Foundation to any obligations whatsoever.
18. **Binding Effect.** This MOU shall be binding on the heirs, executors, administrators, successors and assigns of the Parties, subject to the provisions of Section 15, above.
19. **Time of Essence.** Time is expressly declared to be in the essence of this MOU. City shall designate this Project as a Tier 1 Project and shall use its best efforts to expedite reviews and Project approvals.
20. **Entire Agreement.** This document contains the entire agreement between the Parties concerning the Project and supersedes whatever oral or written understanding they may have had prior to the execution of this MOU. No alteration to the terms of this MOU shall be valid unless approved in writing by the Foundation, and by City, in accordance with applicable provisions of the Sacramento Municipal Code.

**21. Term; Suspension; Termination.**

- A. This MOU shall become effective on the date that it is approved by both Parties, and shall continue in effect until both Parties have fully performed their respective obligations under this MOU, unless sooner terminated as provided herein.
- B. City shall have the right to terminate this MOU at any time by giving a written notice of termination to the Foundation. If the City terminates this MOU:
  - (1) The Foundation shall, not later than five days after such notice of termination, deliver to City copies of all writings, documents or reports prepared pursuant to this MOU.
  - (2) Return all Bond funds received from the City within thirty (30) days of the notice of termination.

**22. Dispute Resolution.** The Parties shall attempt to resolve any disputes they may have in good faith, beginning with the Project Manager and the Foundation's Project Representative. Should they be unable reach resolution, they shall refer the dispute to the City Manager or his designee. Should the Parties be unable to reach resolution, they shall refer the dispute to non-binding mediation before a mutually agreeable mediator. If the parties are unable to agree upon the mediator, the parties will request appointment of a mediator by the American Arbitration Association. Each party shall pay its own costs and be responsible to pay one-half of the mediator's costs.

**23. Notices.** All notices under this MOU shall be given to the other parties at the addresses set forth below or such other addresses as the parties may designate by written notice to the other parties in an appropriate and reasonable period of time in advance.

CITY OF SACRAMENTO  
Cassandra Jennings  
Assistant City Manager  
915 I Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814  
916.808.5704

NATOMAS CHARTER SCHOOL  
Charles Leo  
Executive Director  
4600 Blackrock Drive  
Sacramento, CA 95835

916.928.5353

HONORARY THEATRE COMMITTEE

Ruth Gottlieb

Member

2320 Mossy Bank Drive, Suite B

Sacramento, CA 95833

916.646.3827

- 24. Authority.** The person signing this MOU for Grantee hereby represents and warrants that he/she is fully authorized to sign this MOU on behalf of the Foundation and to bind the Foundation to the performance of its obligations hereunder.

**CITY OF SACRAMENTO**

**NATOMAS EDUCATION FOUNDATION**  
A Not-For-Profit California Corporation

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Ray Kerridge  
City Manager



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Charles Leo, President

APPROVED AS TO FORM:

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Robert Tokunaga  
Supervising Deputy City Attorney

ATTEST:

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City Clerk